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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3434 OF 2007

Fancy Corporation Ltd. ... Petitioner

V/s

Muktabai S. Kalas ... Respondent

Mr. Abhay Kulkarni for the petitioner.

Mr. S.I. Kazi with Ms. S. Kazi and Mr. V.M. Parkar for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 21ST AUGUST, 2007.

P.C.:

1. The petitioner has challenged the orders of the Controlling Authority under the Payment of Gratuity Act passed on 22.10.2003 and 29.11.2005 and the order of the appellate authority dated 7.3.2007.

2. The petitioner had employed the husband of the respondent. He died in June, 1989, while in service. The petitioner claims to have paid the gratuity and all other amounts due and payable to the heirs of the workman. In the year 2001, the respondent filed an application under Section 7(4) of the Payment of

Gratuity Act claiming gratuity on account of the service of her husband with the petitioner. This application was served on the petitioner and the petitioner filed its written statement. However, the application was decided ex-parte as nobody was present on behalf of the petitioner. The Controlling Authority therefore decided the application and held that the respondent was entitled to an amount of Rs.84,809/- together with 9% interest on the amount of gratuity. The Controlling Authority issued a recovery certificate on 20.11.2003. On receipt of this recovery certificate, the petitioner filed a review application being No. Misc.2-A of 2004. The following prayers were sought in the review application:-

> "(a) To set aside/quash the impugned order dated 28.11.2003 passed by the Hon'ble Controlling Authority.
>
> (b) Restore the claim application filed by the opponent under Application No.(PGA/CA)124-21 of 2001 and decide the said claim application on merits.
>
> (c) To stay the operation of the impugned order dated 28.11.2003 till the final disposal of this review application.
>
> (d) Any other order as deem fit in the interest of justice and fairness."

The review application was decided by the Controlling Authority. Since nobody appeared on behalf of the petitioner, the review application was dismissed on

29.11.2005. A fresh recovery certificate was issued on 8.3.2006. Thereafter on 2.6.2006, the petitioner filed an appeal under the Misc.S-3-2006 challenging the orders dated 22.10.2003 and 29.11.2005. A prayer was also made to stay the recovery certificate dated 8.3.2006. The appeal has been dismissed by the Appellate Authority on 7.3.2007.

3. The contentions raised by the petitioner are - (i) that the appellate authority has wrongly calculated the period of limitation; (ii) that the Controlling Authority failed in condoning the delay in filing the application after 12 years; (iii) that the wages considered for payment of gratuity have been wrongly mentioned as Rs.2500/- as this was in excess of basic wages, has to be considered as wages under the Payment of Gratuity Act and, therefore, that interest should not have been awarded for the period of 12 years from June, 1989 to 2001.

4. In my view, all these submissions of the learned advocate cannot be accepted. The petitioner had filed the review application only against the issuance of the recovery certificate on 22.12.2003. No prayer was made for setting aside the order dated 22.10.2003. Thus, when the review was filed, the order of 22.10.2003 was

known to the petitioner and no prayer for setting aside that order was made. It is observed from the order of the appellate authority that the petitioner had not filed the review in its proper format, by annexing copy of the order dated 22.10.2003. No other relevant details were furnished. Apart from this, the review application was dismissed on 29.11.2005 because of the non-appearance of the petitioner or his advocate. An appeal was filed only on 2.6.2006 after the receipt of fresh recovery certificate dated 8.3.2006.

5. In my opinion, the appellate authority has rightly dismissed the appeal by concluding that the petitioner has not filed the appeal within 120 days from 22.10.2003. Assuming that the petitioner was prosecuting the review filed on 22.10.2003, that review was filed in respect of the recovery certificate alone and not against the order of the Controlling Authority. Thus the petitioner has not made out any ground setting aside the order of the appellate authority.

6. As regards payment of interest for the period from 1989 to 2001, the delay was condoned by the Controlling Authority and the application was entertained. In the claim application, the amount of gratuity has been mentioned as Rs.40,385/-. Interest of Rs.44,424/- is

also claimed in the application and the total amount of Rs.84,809/- is claimed. As such, the Controlling Authority has directed the petitioner to pay the entire amount of Rs.84,080/-. However, there is no reason as to why the interest for the entire period has been awarded by the Controlling Authority when the claim was made after 12 years.

7. The matter is remanded to the Controlling Authority only to decide whether the interest should be awarded from 1989 to 2001. The petitioner shall pay to the respondent the balance amount due and payable under the recovery certificate dated 7.3.2006. If the amount has already been deposited with the Controlling Authority, that amount shall be released to the respondent immediately.

8. The Controlling Authority will decide the question of interest within four weeks from today.

9. Petition disposed of accordingly.

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